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of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-eighth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 1130th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 27 February 1996, at 10 a.m.

Chairman: Mr. BANTON

CONTENTS

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (continued)

* No summary record was prepared for the first part (closed) of the meeting.

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GE.96-15425 (E)

The public part of the meeting was called to order at 11.45 a.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 5) (continued)

1. The CHAIRMAN, referring to two decisions taken by the Committee the previous day, informed the members that a new periodic report had since been received from Algeria, thus showing that the Committee had done well to remove that country from the list of those requiring the adoption of preventive measures, and it had also been learned that the report of the former Yugoslav Republic of Macedonia would be transmitted to the Secretariat before the end of the session, so that it would definitely be possible to programme its consideration for the next session.

2. Mr. SHERIFIS said that he wished to raise some questions and make some comments on the preceding closed meeting. Since the information provided during that meeting had been very useful, he wondered why it could not be made public, given the fact that, with a small number of exceptions, it was not confidential in nature. Concerning the substance, he referred to a problem noted by one of the representatives of the Secretariat, namely, the property disputes that were arising in Rwanda as a result of the return of landowners wishing to recover land which they had been forced to abandon and which had been appropriated by others, and he wished to know whether the Charter of the United Nations or other international instruments made provision for such a situation. That question was covered by the Convention and was giving rise to practical problems for United Nations staff in the field.

3. He welcomed the fact that the Dayton Accords, to which Mr. van Boven had drawn the Committee's attention, included special provisions on human rights and said that the members of the Committee should be aware of those provisions. To that end, he suggested that the staff of a competent division of the Secretariat should be requested to list the aspects of the Accords that related to human rights so that the Committee could determine whether any of them were covered by the Convention.

4. He wholeheartedly supported the technical cooperation programme of the Centre for Human Rights and would be very happy to receive its monthly bulletin. He shared the views of Mrs. Sadiq Ali on the question of the document distribution services and, referring to his own case, suggested that one way to reduce expenditure in that regard would be to take careful note of changes in the addresses of recipients.

5. Mr. O'FLAHERTY (Secretary of the Committee) said that he had only four or five copies of the Dayton Accords and, owing to the lack of resources, it was not possible to make photocopies for each member of the Committee.

6. Mr. VALENCIA RODRIGUEZ said that the information provided by the members of the Secretariat was very useful. With regard to Rwanda, he thought that, even if the number of United Nations staff in the field was insufficient, their continued presence should be supported as a means to help minimize

tension. A mechanism should be established to deal with the desperate situation of the thousands of persons who were detained in extremely difficult conditions, frequently at unknown locations. There was also a need to respond to the Rwandan Government's appeal to the effect that, instead of confining themselves to investigating violations of human rights, the United Nations staff should contribute to the country's reconstruction efforts.

7. Referring to the forthcoming withdrawal of UNAMIR, which was scheduled for 8 March, he said that the persistent climate of racial violence in the country was a matter of deep concern. The question of property rights was also a matter of concern and, since, to his knowledge, there were no international standards in that regard, it should be regulated by the domestic legislation of each country. The Committee would therefore do well to familiarize itself with the Rwandan legislation in that field. That was an extremely delicate question which the Rwandan authorities should be called on to consider. With regard to the International Tribunal, one of the main problems being faced was the execution of international arrest warrants, which required the cooperation of many Governments. The Committee should call for a practical demonstration of international cooperation. It should also invite the countries of the region to collaborate in order to avoid outbreaks of violence. It was also vital to obtain the cooperation of the entire United Nations system in both Rwanda and Burundi. Lastly, the Committee should draw attention to the fact that, in those two countries, the task to be accomplished was a long and exacting one that would require considerable efforts.

8. Mr. WOLFRUM said he shared the view of Mr. Sherifis that it was not necessary for the first part of the meeting to be closed and that international public opinion should be informed of the various activities being undertaken by the Centre for Human Rights.

9. Even if the efforts that the United Nations was making in Rwanda, Burundi and Bosnia-Herzegovina to improve the situation of detainees, assist refugees, facilitate their repatriation and restore the legal system were crowned with success, there was no guarantee that they would be sufficient to establish a lasting peace in those countries. That was the aim that the Committee should help to achieve, in close cooperation with the States concerned, by, for example, proposing mechanisms to ensure, primarily at the local level, peaceful and harmonious relations between the various ethnic groups. In that regard, the Committee could form a working group with the task of proposing action that the Committee could take, particularly with regard to Rwanda and Burundi.

10. In the case of Bosnia-Herzegovina, the Committee should make a close study of the Dayton Accords, which endorsed the principle of ethnic cleansing. For example, the towns of Zepa and Srebrenica, in which the majority of the population were Muslim, were currently located in the zone allocated to the Bosnian Serbs. Moreover, although annex 3 to the Accords placed the parties under an obligation to hold free and democratic elections and stipulated that

the electorate should vote in the place where they had been living before 1991, it nevertheless specified that those persons could choose to vote elsewhere, and that was tantamount to consolidating the ethnic cleansing. The rules relating to the rights of displaced persons, as set forth in annex 7 to the Accords, were not applied, since Sarajevo was witnessing a mass population transfer. He thought that the Committee should reconsider all those questions at a later date.

11. The CHAIRMAN suggested that the members of the Committee who wished to participate in the proposed working group should contact by Mr. Wolfrum.

12. Mr. de GOUTTES thanked the Secretariat for the information which it had given to the Committee and which would help the latter to carry out its preventive activities. It would be noted that, despite the many programmes that were being implemented in Rwanda, the situation remained very precarious in view of the forthcoming expiration of the mandate of UNAMIR. Although there were also many programmes in Burundi, the situation was changing very rapidly. With regard to the Dayton Accords, it had to be admitted that they endorsed an ethnic separation that the Committee had often criticized.

13. Three conclusions could be drawn from the information provided by the Secretariat. First, there was the question whether the many programmes that were being implemented by the United Nations, regional institutions, OSCE and the Council of Europe were adequately coordinated. It would also be interesting to know the main aims of those programmes. For its part, the Committee should continue to emphasize the capital importance of instructor training and human rights education for members of the armed forces, the police, magistrates and other public officials.

14. Secondly, there was a need to convince the national and local authorities, who sometimes showed reticence, of the need for the international programmes, whose implementation should be entrusted to persons who were fully familiar with the area.

15. Thirdly, it would be interesting to know the extent to which State institutions, and particularly the judicial system, were continuing to function pending the establishment of new structures within the framework of the international programmes.

16. In conclusion, he expressed willingness to participate in the working group proposed by Mr. Wolfrum.

17. Mr. CHIGOVERA, referring to the question of Burundi and Rwanda, said that he was far from satisfied with the programmes described by the representatives of the Secretariat, since, like the many other detailed activities of other international bodies, they were not designed to achieve the only effective long-term solution, namely, ethnic harmony and integration. Any training programme was doomed to failure as long as the two parties remained hostile. The establishment of harmonious inter-ethnic relations was an indispensable

prerequisite for peace in a country such as Rwanda where the army and the Government were dominated by a single ethnic group and where virtually all the refugees and detainees belonged to another group. Even the effect of the activities of the International Tribunal might be the opposite of that expected. In fact, the persons indicted, who belonged to the same ethnic group, had to answer to the crime of genocide while the other group had apparently only committed murders and there was a high risk that the persecutors might themselves become persecuted and harbour a desire for revenge. Inter-ethnic peace should be the main concern of the Committee and particularly of the proposed working group, which could draft a framework constitution for Burundi or Rwanda by drawing inspiration - a possibility that no one had as yet considered - from what had been done elsewhere in Africa, in Mozambique, for example.

18. Mr. GARVALOV, referring to the situation in Bosnia-Herzegovina, said that, although the Dayton Accords constituted the solution with the fewest drawbacks, despite the frustrations to which they would inevitably give rise and although every effort should be made to ensure their full implementation, it seemed unlikely that they would establish peace between the ethnic groups in the near future. In human terms, the events had left an extremely serious aftermath which the Committee should acknowledge and attempt to dispel. For example, the multifaceted phenomenon of ethnic cleansing was continuing and people who were not under any armed threat could be seen fleeing from the place where they had always lived, in order to protect their lives, without heeding the sensible advice of the competent officials. Regardless of whether it was referred to as ethnic cleansing or as population transfer, that phenomenon was extremely serious and might give rise to an accumulation of inter-ethnic grievances that would be transmitted from generation to generation. The Committee had an obligation diligently to seek to improve that situation.

19. Mr. YUTZIS said that a distinction should be drawn between the information received by the Committee, the position adopted by the Committee on that information and, lastly, the proposals made by the Committee. While acknowledging the considerable efforts that had been made within the framework of the United Nations system, he found it regrettable that the available resources were not always used in the most judicious manner. With regard to technical cooperation projects (in the former Yugoslavia, for example), he thought that the Committee had not adopted the critical approach needed to apply an evaluation and monitoring mechanism that would make it possible to assess the results achieved and make a useful contribution in each specific situation. He therefore proposed the establishment of a multidisciplinary working group that would take account of the various aspects of the social situation. In his view, it would be advisable to assess the Dayton Accords from that standpoint in order to ascertain whether the implementation of some of their provisions might have adverse psychological and social consequences that would make problems worse instead of solving them.

20. The CHAIRMAN invited the members of the Committee to specify the questions which, in their opinion, should be considered at the current session under agenda item 5 on the prevention of racial discrimination, including

early warning and urgent procedures. He requested Mr. Valencia Rodríguez to prepare a text expressing the Committee's support for the idea of a permanent United Nations presence in Rwanda, as well as a summary of the views of the members of the Committee on the position to be adopted on the question of Burundi. He also requested Mr. van Boven to consider the wording of a declaration that the Committee might make concerning the application of the Dayton Accords.

21. Mr. YUTZIS said that he supported the idea of drafting declarations on the situation in Rwanda, Burundi and Bosnia-Herzegovina, but thought that the Committee would do better to consider the most appropriate measures to ensure the effectiveness of the programmes being implemented in those countries.

22. The CHAIRMAN suggested that the consideration of that question should be continued at a later meeting.

The meeting rose at 1 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-eighth session

SUMMARY RECORD OF THE 1131st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 27 February 1996, at 3 p.m.

Chairman: Mr. BANTON
later: Mr. FERRERO COSTA

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

CONSIDERATION OF A NOTE FROM THE PERMANENT MISSION OF NIGERIA

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GE.96-15429 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6)

Initial report of Zimbabwe (CERD/C/217/Add.1 and HRI/CORE/1/Add.55)

1. At the invitation of the Chairman, Mr. Chinamasa, Mr. Jokonya, Mr. Chifamba, Mr. Maunganidze and Ms. Ndaona (Zimbabwe) took places at the Committee table.

2. The CHAIRMAN welcomed the delegation of Zimbabwe and drew attention to an addendum to the initial report which had been circulated to members.

3. Mr. CHINAMASA (Zimbabwe) said that Zimbabwe had acceded to the Convention on 13 May 1991. The delay in submitting the initial report (CERD/C/217/Add.1) had been due to the lack of implementing machinery. The report had been prepared by the Interministerial Committee on Human Rights and Humanitarian Law, established in February 1993, whose functions included examining international human rights instruments and recommending accession thereto, informing government ministries of Zimbabwe's obligations under instruments to which it was a party, monitoring violations of their provisions, initiating and coordinating measures to ensure compliance, and preparing reports for submission to the relevant bodies set up under those instruments. He was confident that Zimbabwe would henceforth comply with its reporting obligations in a timely manner and apologized for any shortcomings in the report. He was willing to answer any questions about events prior to May 1991.

4. There were a number of statistical errors in paragraph 5 of the core document (HRI/CORE/1/Add.55) concerning ethnic characteristics. The largest ethnic group, the Shona, totalled 85 per cent of the population. The Ndebele accounted for 13 per cent and the Sotho, Tonga and Venda for 1.5 per cent. Persons of European and Asian origin constituted 0.5 per cent of the total. Under paragraph 6, the gross domestic product (1992) should read Z$ 25,790 million.

5. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) welcomed the initial report of Zimbabwe, which had been drafted in accordance with the Committee's guidelines. Zimbabwe was a multiracial, multicultural and multilingual country, although the Shona constituted by far the largest ethnic group. Apart from references in the report to specific laws to prohibit racial discrimination, there was little indication of the manner in which article 1 of the Convention was being implemented, and further information about anti-discriminatory legislation was required. Zimbabwe was, however, to be commended for its policy of non-discrimination on the basis of Section 23 of the Constitution and particularly for the measures taken in various fields with the aim of abolishing discriminatory practices predating independence. Although racial discrimination had reportedly been eliminated from the education system, it might be asked whether the establishment of a quota system in schools - 60 per cent African and 40 per cent non-African - did not constitute reverse discrimination, and more information was needed on the reportedly disproportionate number of Shona-speaking teachers and supervisors in Matabeleland schools.

6. He inquired into the reasons for the establishment of trust of the kind referred to in paragraph 10 of the report, which conferred benefits in a discriminatory manner, and the circumstances in which they had been and might still be established and made subject to variation by law.

7. The information given in paragraphs 25-27 on the highly sensitive issue of land distribution following independence was most significant, as was the acknowledgement that problems remained. The issue was particularly critical for rural dwellers and in economic terms. The Government of Zimbabwe was to be commended for the measures taken and was requested to keep the Committee informed of developments, especially regarding the resettlement programme initiated in 1980. Additional details were needed on the scope of the 1992 Land Acquisition Act replacing the 1985 Act, as well as on the policy of reconciliation referred to in paragraph 32.

8. With reference to article 3 of the Convention, credit was due to Zimbabwe for the measures to combat racist doctrines and practices, referred to in paragraphs 33-36 of the report, including its participation in international anti-racist organizations and movements. Additional information on specific actions against racism and racial discrimination would be welcome.

9. In their implementation of article 4 of the Convention, States parties were required to take legal measures, irrespective of the extent of the phenomenon of racial discrimination. Compliance with article 4 had a preventive effect, since no country was immune from manifestations of discrimination. The provisions of the Law and Order Maintenance Act (Chap. 65) were not sufficient to ensure full compliance with article 4 of the Convention, particularly the obligations under article 4 (b) concerning racist organizations. Zimbabwe should therefore be requested to consider the possibility of enacting specific legislation to guarantee full compliance with article 4.

10. In connection with article 5 of the Convention, he noted that the judicial system in Zimbabwe enjoyed a deserved reputation for independence. Referring to paragraph 41 (d) of the report, he requested information about the right of indigent accused persons to free legal aid. Further information was needed about the legal provisions governing the Ombudsman's functions and his activities in guaranteeing protection against acts of racial discrimination. The new measures adopted to guarantee the exercise of the right to marriage and the choice of spouse were commendable. He understood that the Marriage Act and the African Marriages Act were two distinct institutions, but it was not clear whether the latter was designed to cover existing customary practice and to protect only marriage between Africans, possibly to the detriment of other ethnic groups. Nor was there any indication of the provisions governing mixed marriages. On the right to inherit and the existence of a dual legal system, referred to in paragraph 55, he wished to know what obstacles stood in the way of harmonization and what system was applied if one of the partners in a mixed marriage died intestate. With regard to freedom of thought, conscience and religion, freedom of opinion and expression and freedom of peaceful assembly and association, some explanation was needed about the scope of possible restrictions by way of parental discipline.

12. Regarding legislative, judicial and administrative remedies, he wished to know whether the remedies available to victims of racial discrimination included applications to the Ombudsman or the Supreme Court for compensation or reparation. The status of the Convention in relation to domestic legislation needed to be clarified.

13. In connection with the implementation of article 7 of the Convention, it was necessary to introduce courses of study concerning racial discrimination, especially in higher education. Public information activities to promote tolerance and understanding and to disseminate the aims and purposes of the Convention were also needed. Referring to the addendum to the report, he commended the new measures to promote greater tolerance and understanding among racial groups in educational establishments. The Government's policy on public information and the media also deserved praise.

14. Finally, he asked that the Committee be provided with the texts of the legal provisions referred to in the report. The Government should also consider the possibility of making the declaration under article 14 of the Convention concerning individual communications.

15. Mrs. SADIQ ALI commended the high literacy rate reported in document CERD/C/226/Add.55 and requested a breakdown of literacy figures at the primary, secondary and university levels.

16. As to the subject of parliamentary elections, she asked how - considering the ruling ZANU-PF party's overwhelming victory at the polls in April 1995, with the sole opposition coming from the ethnically-based ZANU (Ndonga) party, in the eastern districts - the Government intended to implement its policy of racial reconciliation. A May 1995 article in New Africa, claimed that, following the elections, there was a threat of ethnic conflict if discrimination in favour of the ruling Shona majority and against the Ndebele were not corrected. She wondered what improvements had been made in the situation of the Ndebele.

17. In paragraph 56 of the report, concerning the Office of the Ombudsman, it was stated that the defence forces, police and prison service were specifically excluded from being the subject of investigation. She asked how cases involving those services were handled and whether training was given to law enforcement agencies in accordance with the Committee's general recommendation XIII. Human rights groups in Zimbabwe had accused the ruling ZANU-PF party of instigating riots in Harare after a recent peaceful march against police brutality and killings. She asked whether an inquiry had been launched into those killings.

18. In connection with article 5 (e) of the Convention, she requested information on the economic situation, and with reference to the Public Premises (Prevention of Racial Discrimination) Act No. 2 of 1979, which was mentioned in the initial report, she asked whether any damages had been awarded or proprietors' licences cancelled on the grounds of racial discrimination. In the field of education and sport, it was reported that the children of well-off families had access to better schools and clubs, but it was not clear whether talented but poor children benefited from a system of scholarships or other special measures.

18. Zimbabwe was to be congratulated on its land resettlement programme. Further details would be appreciated on the criteria of eligibility for citizenship, referred to in paragraph 50 of the initial report. Additional information was also needed on the implementation of article 7.

19. Mr. WOLFRUM, after praising the structure and presentation of the initial report, said he was glad to note from paragraph 9 that, according to the Constitution, "no law shall make any provision that is discriminatory either of itself or in its effect". The Committee had drafted a general recommendation urging countries to adopt just such a provision. Paragraphs 2 (a) and (b) of the Constitution - also quoted in paragraph 9 of the report - contained a nuanced and ingenious definition of discrimination. He wondered whether the Supreme Court had ruled in favour of any persons whose rights had been violated on racial grounds. If so, examples should have been given.

20. Referring to paragraphs 25-28, he asked for further details on how land redistribution had been achieved. The word "acquire", used in paragraph 31, was ambiguous: it was unclear whether land was bought or expropriated. He also wished to know, in relation to paragraph 29, what the ethnic distribution among farmers was, as between the Shona and other ethnic groups.

21. Too little had been said about education, and the two paragraphs dealing with the subject - paragraphs 3 and 63 - were mutually inconsistent. He was also interested to know how minority languages were supported. Referring to paragraphs 45-48, he asked how the system of political parties worked: what parties existed and by what law they were regulated. The same question applied to trade unions. Lastly, more needed to be said about the Ombudsman, since an ombudsman's functions varied from country to country. He inquired about the Ombundsman's relationship, if any, with the administrative courts.

22. Mr. FERRERO COSTA also praised the report, but felt that more information was required. Zimbabwe's next report should give more details concerning the legal status of institutions and the practical application of laws and standards. He wondered, for example, whether the Supreme Court had dealt with any racial discrimination cases and how international treaties - particularly those relating to human rights and racial discrimination - were incorporated in national legislation. He also wished to know more about the dual legal system mentioned in paragraph 55 and the exact distinction between "customary" and "general" law. With regard to paragraph 59, he requested more information on how applications for redress were submitted to the Supreme Court. He asked how the Court enacted laws on racial discrimination and what "directions" it issued.

23. He was concerned that, according to paragraph 60, there was no single piece of legislation providing protection against racial discrimination in Zimbabwe. Article 4 of the Convention made it clear that such legislation should exist. He also asked for more information on the Ombudsman, including selection procedure, duties and practical record in defending human rights.

24. With regard to education, the admission in paragraph 63 that the educational system did not include a curriculum on racial discrimination was

an honest one, but did nothing to promote the objective enunciated in paragraph 3. Such a curriculum was necessary and he wondered whether the Government had taken any steps to establish one. More information was also needed on the issues covered by article 5 of the Convention.

25. With reference to the addendum to the report, he asked for confirmation that the Broadcasting Act gave a monopoly to the Zimbabwe Broadcasting Corporation. If it did, he wondered who belonged to the Broadcasting Corporation and how freedom of information could be guaranteed. Similarly, in relation to the dissemination of information, he wished to learn more about the programme to restructure the mass media. He wondered whether the Ministry of Information was running the programme itself and what was meant by "the people of Zimbabwe as a whole". More should also be said about the independent press. Lastly, he found strange the requirement under the Education Act, No. 5 of 1987, that "each educational institution should reserve a certain percentage for African pupils"; that sounded like a throwback to colonial times. He also wondered what was the overall position of the minority white and Asian students.

26. Mr. LECHUGA HEVIA noted the requirement in paragraph 3 that 60 per cent of the pupils in every school should be African. He wondered, however, whether private schools still existed and, if so, whether the percentage distribution was the same in such schools. He also wished to know how schools managed to function in deprived rural areas. He pointed out that, through the discriminatory practice of charging high entrance fees, some sports clubs made a mockery of legislation on racial discrimination, and he wondered whether anything was being done to combat such behaviour. In connection with paragraph 40, he asked how the Law and Order Maintenance Act applied to subversive statements made when no witness was present. Lastly, he asked whether there was any legislation against racist propaganda.

27. Mr. de GOUTTES said that paragraph 60 was not in conformity with article 4 of the Convention. Comprehensive statutory protection against racial discrimination was necessary not only for preventive purposes, but also in order to influence attitudes. Criminal law was the expression of the set of values espoused by a society, so that priority should be given to particularly important matters such as racial discrimination. He also noted that no details had been given of the number of complaints - or prosecutions - relating to racial discrimination. It seemed that there was no provision for criminal sanctions in that regard. He wondered what action was taken with regard to perpetrators of racism: whether they appeared before magistrates or went straight to a higher court. More details were also required regarding the Inter-Ministerial Committee on Human Rights, which was mentioned in paragraph 64 of document HRI/CORE/1/Add.55. He wondered whether the Committee either followed up or disseminated the reports mentioned in the paragraph.

28. Mr. SHERIFIS commended the report and expressed appreciation of the fact that Zimbabwe had signed and ratified the Convention. He urged the Government to join the select group of countries that had made a declaration recognizing the competence of the Committee under article 14, paragraph 1 of the Convention.

29. More information on legislative, judicial and administrative remedies should be included in the next report.

30. With regard to paragraph 12 of the report, he welcomed the assurances given by the delegation concerning property rights. However, in terms of civil rights in general, he asked if and how Zimbabwe guaranteed the right of everyone, irrespective of ethnic origin, to take part in the Government, as provided for in article 5 of the Convention, and whether an ethnic balance was required in government, as between President and Vice-President or important ministers.

31. Regarding article 3 of the Convention, he was gratified by Zimbabwe's efforts to promote the elimination of racial discrimination.

32. Mr. GARVALOV said that the initial report of Zimbabwe was a very good one which augured well for future periodic reports. It did not seek to disguise the problems facing Zimbabwe in implementing the Convention. In the area of education, for example, although the authorities were undoubtedly trying to eradicate racial discrimination, the "stipulated 60/40 racial composition" in schools was perhaps having the opposite effect.

33. Paragraphs 22 and 23 were commendably frank about existing problems. However, the Committee would welcome further information on the ethnic composition of the population and whether citizens could take complaints of racial discrimination to the courts in addition to the Labour Relations Department. Similarly, in paragraph 29, the reference to "the establishment of a more balanced racial composition of the large-scale commercial sector" seemed to imply that Zimbabwe was having problems in that sector.

34. The dissemination of information referred to in paragraph 32 was an important issue for a country that was breaking free from a long legacy of colonial domination. However, the Ministry of Information's campaign "to restructure, reorganize and reorientate the mass media" should not jeopardize freedom of speech. The mass media should not be subjected to Government control or censorship but should be free to serve as a corrective force in the quest for democracy.

35. Clarification was needed of the words "a citizen of Zimbabwe, or a permanent resident" in paragraph 45 and "all persons" in paragraph 47.

36. With regard to the right to marriage and choice of spouse, he asked whether inter-ethnic marriages occurred in Zimbabwe and whether young women were sometimes pledged to marry partners not of their choosing. Finally, he asked whether political parties with ethnic or religious affiliations were permitted.

37. Mr. van BOVEN said that the initial report rightly emphasized the difficulties of fully redressing the situation in Zimbabwe after many years of injustice. Land distribution was a key area in that respect, and he asked what was being done to ensure a more equitable distribution.

38. He drew attention to the obligations of States parties under article 4 of the Convention. General recommendation XV could provide guidance when drawing up the relevant national legislation.

39. Article 6 of the Convention referred to the right to seek "just and adequate reparation or satisfaction for any damage suffered" as a result of racial discrimination. The Committee would be grateful for information on compliance with that provision.

40. The delegation and Government of Zimbabwe should do their utmost to disseminate information relating to the work of the Committee and its consideration of the initial report. The Inter-Ministerial Committee on Human Rights could be well placed to carry out such a task and could also facilitate the implementation of the Convention, pursuant to general recommendation XVII. Zimbabwe should also give serious thought to making a declaration under article 14 of the Convention, and to ratifying the amendment to article 8, which would put the Committee's finances on a sounder footing.

41. Mrs. ZOU Deci said that the main task of the Government was to eliminate the vestiges of racial segregation left over from the colonial system which had been characterized by a dual system in various areas, in violation of article 3 of the Convention. Greater efforts were needed, although wiping out the legacy of the former system was easier said than done. Education was a key area in the elimination of racial discrimination and prejudice. It was therefore essential to improve the education offered to the African population and raise their cultural level so that they could overcome their educational and economic disadvantages and compete with Africans, and non-Africans, in other countries. It was to be hoped that the situation described in paragraph 63 of the report would be rectified and that Zimbabwe would ensure full respect for the provisions of article 7 of the Convention.

42. The CHAIRMAN, speaking as a member of the Committee, noted that section 26 of the 1980 Constitution of Zimbabwe preserved certain pre-1980 legislation, which inter alia provided for a separate electoral roll for whites and possibilities of veto. He wondered, therefore, whether section 52 of the 1980 Constitution, which restricted the possibility of legislative amendments to the Constitution, was still in force. He also wondered whether the Committee's scrutiny had encouraged reviews of the compatibility of draft legislation with the Universal Declaration of Human Rights. Referring to paragraph 18 of the report (CERD/C/217/Add.1), he wished to know more about the racial imbalance in private schools and, in particular, whether teachers tried to mitigate its adverse effects.

43. He found paragraph 24 of the report disappointing; he asked whether the International Commission of Jurists was represented in Zimbabwe and whether it and other non-governmental organizations mentioned in the core document could be consulted pursuant to general recommendation XVII. He also supported the request for further information about alleged racially motivated differentiation in land prices.

44. Referring to article 5(e)(i), he wondered whether differences in racial origin, and possible associated differences in wealth, were a barrier to job

opportunities and equality in the professions. With regard to article 6, he asked what remedies were available in cases of day-to-day discrimination in such areas as jobs and housing. According to paragraph 63 of the report, the educational system included no curriculum on racial discrimination "at any level"; he wondered whether that should read "at primary or secondary level" since he understood that there was some teaching on the subject at tertiary level. Lastly, he hoped that the next periodic report would review the problem of inherited discrimination, including the relationship between differences in ethnicity and differences in wealth, the influence of the [illegible] on the country's economy, and the policies pursued to overcome the [illegible] problems.

45. Speaking as Chairman, he invited the delegation of Zimbabwe to attend the Committee's next meeting, and to consider which of the Committee's queries it would reply to then and which would be dealt with in the next periodic report or in a revision of the core document.

46. Mr. Chinamasa, Mr. Jokonya, Mr. Chifamba, Mr. Maunganidze and Ms. Kaseke (Zimbabwe) withdrew.

47. Mr. Ferrero Costa took the Chair.

CONSIDERATION OF A NOTE FROM THE PERMANENT MISSION OF NIGERIA

48. The CHAIRMAN recalled that, following consideration of the thirteenth periodic report of Nigeria (CERD/C/263/Add.3) at the forty-seventh session, the Permanent Mission of Nigeria, in a note dated 4 September 1995, addressed to the Centre for Human Rights, had asserted that Mr. Banton, as country rapporteur, had made inaccurate statements in his presentation, where he had referred to allegations published in The Guardian of 14 June 1995. In the same note, the Committee had been requested to "take steps to correct these serious errors". Mr. Banton had pointed out, in a note in reply dated 17 September 1995, that he had been responding to an important public statement, while in no way making a claim as to its veracity. The question was whether, and in what manner, the Committee should respond.

49. Mr. VALENCIA RODRIGUEZ said that the members of the Committee had all read the note from the Nigerian Permanent Mission, the press article referred to, and Mr. Banton's comprehensive reply. He foresaw no further consequences. The Committee would, of course, continue to make use of press sources, but should treat them with care whenever it appeared that the information might be imprecise.

50. Mr. van BOVEN said that although, in retrospect, he had mixed feelings about the procedure followed by the Committee in considering the report from Nigeria, the country rapporteur had clearly been treated with disrespect by the Nigerian delegation, whose members had even laughed at the reference to Mr. Saro-Wiwa, who had subsequently been executed. Mr. Banton's credibility had been called into question; the tone of the note from the Permanent Mission warranted a response by the Committee as a whole.

51. Mr. CHIGOVERA, supported by Mr. SHERIFIS, Mr. WOLFRUM, Mr. de GOUTTES, Mr. GARVALOV, Ms. SADIQ ALI, Mr. LECHUGA HEVIA and Mr. YUTZIS said that the principle of collective responsibility required that the Committee as a whole should send a reply.

52. The CHAIRMAN suggested that Mr. van Boven, assisted by any other interested members, should draft a reply, to be signed by the three Vice-Chairmen and sent to the Permanent Mission of Nigeria as soon as possible. He took it that, in concluding consideration of the matter, the Committee as a whole wished to record its unreserved support for Mr. Banton.

53 It was so agreed.

The meeting rose at 6 p.m.

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on the Elimination
of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-eighth session

SUMMARY RECORD OF THE 1132nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 28 February 1996, at 10 a.m.

Chairman: Mr. BANTON

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Initial report of Zimbabwe (continued)

Draft general recommendation concerning article 5

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-15433 (E)

The meeting was called to order at 10.10.a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Initial report of Zimbabwe (CERD/C/217/Add.1) (continued)

1. At the invitation of the Chairman, the members of the Zimbabwean delegation resumed their seats at the Committee table.

2. Mr. CHINAMASA (Zimbabwe) expressed satisfaction at the fruitful dialogue that had begun between the Committee and his delegation, which would recommend that the Government should consider making the declaration provided for in article 14, paragraph 1, of the Convention and that it should ratify article 8 as amended.

3. With regard to education, the provision of the Education Act whereby at least 60 per cent of pupils in every educational establishment, whether public or private, must be Africans, had made it possible to end the segregation that had prevailed during colonial times and strengthen social integration and racial harmony. The Government had also taken various measures to combat discrimination due to disparity of income. Disadvantaged families thus received State aid to pay the fees of children attending primary and secondary school. Access to higher education was determined by merit alone, and all students, whatever their families' income, received State aid in the form of scholarships and loans. However, for reasons of economy, the State was considering reducing aid to students from wealthier families. For the same reasons, the Government was encouraging non-African minorities, especially the Greeks, Portuguese and Asians, to set up schools.

4. Teaching was conducted not only in English, which was the official, common language, but also in Shona and Ndebele, the vernacular languages spoken by 65 and 15 per cent of the population respectively, in places where they were majority languages. The State was currently making efforts to introduce other vernacular languages, such as Kalanga and Tonga, into education.

5. The Government was also trying to limit elitism and to raise black people's cultural and economic level in order to place them on an equal footing with other categories of the population. There, too, however, the colonial heritage was a serious handicap that would take a long time to overcome.

6. The Government would take steps fully to meet its obligations under article 7 of the Convention, in particular to include the subject of human rights and awareness-raising courses on racial matters in school curricula. It would also try to include in its following report information on the school attendance rates of boys and girls in primary, secondary and higher education and the percentage of black children in private schools.

7. It must be acknowledged that the legislation to eliminate any incitement to racial hatred and any acts of discrimination was not yet sufficient to meet the obligations laid down in article 4 of the Convention. The Government

would therefore take all necessary steps to ensure that all acts of racial discrimination were declared punishable offences, despite the fact that it was sometimes difficult to criminalize such acts. It should be noted that the "Racial Trusts" had been declared unlawful by Act No. 13 of 1991 (see report, para. 10).

8. Turning to the question of property rights, he said that the right to own property was enshrined in the Constitution but was not sacrosanct. The State had the power to derogate from it for public purposes. Under the 1992 Land Acquisition Act, in order to implement its policy on the redistribution of land, which was very inequitably distributed between Blacks and Whites as a result of colonization (see report, paras. 25 to 31), the State had the power to expropriate land belonging to Whites and give it to black farmers, after fairly compensating the owners. Owners of land were entitled to appeal against that decision if they considered the Government to have acted mala fide. The price of land not affected by the agrarian reform was determined by the free play of supply and demand. It should be made clear that the allegations that white landowners who wished to sell their land gave priority to white buyers at the expense of black buyers by offering more attractive prices to Whites were groundless. If such practices existed, they were very rare.

9. The Government would provide statistics in its following report on land distributed to the Shonas and Ndebeles.

10. In relation to the policy of national reconciliation, Zimbabwe had opted in 1980 for amnesty in respect of crimes committed by Whites against Blacks during the colonial period, which was why the country had achieved the peace and stability it now enjoyed, even though racist behaviour had not yet completely disappeared. The different communities had learned to accept and respect each other, and other countries, such as South Africa, had modelled their own policies on Zimbabwe's policy in that area. Another reflection of the policy of reconciliation was Zimbabwe's determination to give the Ndebeles, the minority group, the same educational opportunities as the Shonas. The Government was therefore working to ensure that primary school teachers in the Ndebele areas, often Shonas who had formerly been favoured in educational terms, spoke their pupils' mother tongue.

11. The country's population was 65 per cent Shona and 15 per cent Ndebele, with the many other groups representing a small percentage apiece. There had been approximately 250,000 Whites at independence; there were now approximately 100,000 of them, and 30,000 inhabitants of Asian origin. The following report would contain a more precise breakdown of the population by ethnic group. Although there was no legislation to ensure that those groups were represented, there was no discrimination against any of them, since the country was divided into voting districts that respected their unity. Each of them could therefore elect a representative to defend its interests, as attested by the diversity of ethnic origins, including white and Asian, of the members of Parliament. Furthermore, the Constitution authorized the President to appoint 12 individuals to represent the particular interests of a given group, including the Whites. The Zanu party (PF) was the majority party (117 seats out of 120) in the Parliament, but it was itself the result of the merging, in 1987, of two parties, one supported by the Shonas and the other by

the Ndebeles, as part of the policy of reconciliation. Although there was no law stipulating that the President and Vice-President should not belong to the same ethnic group, the current President of Zimbabwe was in fact a Shona and the two Vice-Presidents each belonged to a different ethnic group. It was worth noting that Zimbabwe's example had been followed by Malawi and South Africa.

12. The Ombudsman was appointed by the President, in consultation with the Judicial Service Commission, and was required to have the same qualifications as a judge; the Ombudsman was therefore a highly qualified person whose role was to investigate any action by the authorities that might constitute an injustice towards a private individual. There were plans to extend the Ombudsman's sphere of competence to cover the defence, police and army departments, which appeared to be responsible for most acts of injustice. The Ombudsman might also be empowered, in the near future, to intervene in all cases of human rights violations committed by a public official. The Ombudsman's functions were different from those of the administrative tribunal in that he only intervened when judicial remedies had been exhausted and could initiate an inquiry and intervene when he considered that an injustice had been committed.

13. Replying to the questions on the legal aspects of marriage and inheritance, he explained that, given the country's history, the law governing those matters was not yet standardized although the scope of ordinary law was constantly expanding. There were three types of marriage: civil marriage, which was monogamous and accessible to everyone; marriage according to customary law, which was potentially polygamous, was governed by the law on African marriages, and was only accessible to Blacks or those who married Blacks; and unregistered customary marriage, which corresponded to de facto marriage and conferred on such couples the same rights as the others. Custody and maintenance of children and divorce were governed by the law. The law no longer required one of the spouses to have been "at fault" for a divorce to take place; the couple could divorce as soon as they recognized that irreconcilable differences existed. There was no law prohibiting mixed marriages between people of different ethnic groups or between Whites and Blacks, although such marriages were often not well accepted by either community.

14. Inheritance depended on the type of marriage entered into. For example, a woman who married under the African marriage law did not inherit anything upon her husband's death. The Government was considering the possibility of changing that situation, in consultation with local leaders and the population as a whole. In the case of Whites, when a civil marriage had been duly registered, the widow and children inherited upon the husband's death.

15. The question of acquiring nationality had been mentioned. A candidate for Zimbabwean nationality had to submit an application, which was duly considered; if it was accepted that person became a Zimbabwean citizen.

16. Concern had been expressed regarding freedom of expression. He could state with certainty that the press was completely free. He cited the example of a Shona mayor who had criticized the policy, which he considered discriminatory, pursued by his own party, the party in power, vis-à-vis the

Ndebeles. He acknowledged, however, that the ZBC radio station was State-run, which represented a constraint on freedom of expression. The reason was that Zimbabwe did not want its media to fall into the hands of foreign interests. It was, however, considering ways of making room for the private sector, and competition between government-owned and privately-owned media should begin in the near future.

17. In the legislative sphere, international conventions and treaties only became part of domestic law when they had been incorporated under specific enactments. Private individuals who felt that any of their rights had been violated could apply directly to the Supreme Court, which could issue an order or direction to redress the injury. An inter-ministerial committee had also been established to protect and promote human rights and ensure coordination with NGOs.

18. He assured the members of the Committee that the next report would contain more information on measures taken to combat racism in various fields, especially in employment, where discrimination was difficult to eliminate, since the means of production were primarily held by Whites, who were also responsible for recruitment. He asked Mrs. Sadiq Ali to inform him of the sources of her information concerning the human rights demonstration which had allegedly taken place in 1992, resulting in the killing of 22 people and the wounding of 31 by the police. He thanked the Committee for giving him the opportunity to reply to the questions raised and promised that Zimbabwe's next report would contain specific replies to the questions that had not been answered.

19. The CHAIRMAN welcomed the optimism shown by the Zimbabwean delegation in its replies to members and Zimbabwe's concern to fulfil its obligations under the Convention.

20. Mr. ABOUL-NASR expressed admiration for the way in which Zimbabwe was resolving its problems, thus serving as a model for other countries, notably South Africa. Concerning the second type of marriage, known as customary marriage, he would like to know whether there were any restrictions based on race or ethnic group. What exactly did the expression "African marriage" mean?

21. Mr. CHINAMASA (Zimbabwe) acknowledged that polygamous marriages were reserved for Blacks. Two non-black people could not contract a customary marriage. However, the "White Book" proposed to eliminate the race issue in marriage and let the spouses decide whether to contract a monogamous or polygamous marriage, whatever their skin colour.

22. Mrs. SADIQ ALI said that her information on police brutality during a human rights demonstration in 1992 had come from an article in the Africa Research Bulletin, published in Great Britain; she was prepared to send the article to anyone interested as soon as she returned to India.

23. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) thanked the Zimbabwean delegation for its frank replies to practically all the Committee's questions. He hoped that Zimbabwe would make the declaration provided for in article 14, paragraph 1, of the Convention and would accept the amendments to the

Convention adopted at the fourteenth meeting of States parties. He welcomed the abundant information provided in many fields (racial balance in schools, expanded role of the Ombudsman, etc.). He also hoped that the Zimbabwean Government would publicize as widely as possible the International Convention on the Elimination of All Forms of Racial Discrimination and the comments made by the Committee when considering the report.

24. The CHAIRMAN said that the Committee had thus completed the first part of its consideration of the initial report of Zimbabwe.

25. The Zimbabwean delegation withdrew.

Draft general recommendation concerning article 5 (CERD/48/Misc.6) (English only)

26. Mr. WOLFRUM said that the new version of the draft recommendation on article 5, which he hoped the Committee would adopt, consisted of four paragraphs. Paragraph 1 referred to the way in which the Committee generally interpreted the implementation of article 5 of the Convention. Paragraphs 2 and 3 concerned the frequently-raised question of the application of certain rights to non-nationals of a State. Paragraph 4, undoubtedly the most important paragraph, referred to cases where the practices of private institutions might undermine the exercise of the rights or freedoms referred to in article 5, the idea being that the State party must ensure, and the Committee must confirm, that no violation of the Convention was committed in such cases.

27. Mr. VALENCIA RODRIGUEZ suggested that the first sentence in paragraph 3 of the draft recommendation should be deleted, since it expressed an idea that was already contained in the first sentence of paragraph 2. New paragraph 3 would begin with the existing second sentence, amended to read: "Most of the rights and freedoms mentioned in article 5 are related to all living in a given State."

28. Mr. ABOUL-NASR asked what exactly was the purpose of the proposed draft recommendation.

29. Mr. WOLFRUM said that he was quite prepared to endorse Mr. Valencia Rodriguez' suggestion which made the text much clearer. Replying to Mr. Aboul-Nasr, he said that the purpose of the recommendation was to clarify the Committee's position on an issue that arose frequently during its deliberations, namely, the application of article 5 to nationals and non-nationals of a State. There was already a general recommendation on the treatment of non-nationals, but it did not solve the problem of national regulations that treated nationals and non-nationals differently. The Committee was therefore clearly indicating in paragraph 2 of the draft recommendation that if a State imposed restrictions on rights mentioned in article 5 resulting in discrimination against certain non-nationals, the Committee was entitled to look into the question, notwithstanding the opinion of certain States.

30. Mr. de GOUTTES said that the value of a recommendation lay in making things clearer. In his view, however, the wording of paragraph 4, which concerned what was probably the most important point, was not explicit enough. The Committee should indicate that it expected a State in which the behaviour of private institutions affected the exercise of the rights mentioned in article 5 of the Convention to take preventive action and, if necessary, enforcement action.

31. Mr. SHERIFIS said he did not fully understand for whom the recommendation was intended: the States parties or the Committee? The very first sentence of the text would seem to imply that it was intended for the Committee.

32. Mr. WOLFRUM replied that he had added the first sentence at the request of certain members of the Committee, but he was fully prepared to delete it.

33. Mr. FERRERO COSTA said that the draft recommendation was very useful in clarifying certain questions. However, to give the text more weight, he proposed that the last sentence of paragraph 3 should become a new paragraph 4, specifying that it concerned the rights and freedoms mentioned in article 5.

34. Mr. GARVALOV said he was prepared to endorse the draft recommendation but would like to make two remarks. First, he was not sure that the word "presumes" in the penultimate sentence of the first paragraph was appropriate, since the rights mentioned in article 5 were now well established and universally accepted. Secondly, the first sentence of paragraph 4, read in conjunction with the last sentence of paragraph 1, might appear to indicate that a State could choose to recognize and guarantee certain human rights, which were not necessarily those laid down in the Convention. The Committee must keep strictly to the Convention.

35. Mr. van BOVEN said he wished to make three comments on the proposed text, which he supported. First, like all general recommendations, the one under consideration must remain within the limits of the Convention. Secondly, the draft recommendation raised a very important question, in particular in paragraphs 2 and 3, namely, that of nationals and non-nationals. In view of the growing differences in treatment in many countries, especially the countries of the European Union, between nationals and non-nationals, such a recommendation would give the Committee an extra tool for considering that question. The third comment concerned a drafting change; in the first sentence of paragraph 2, the words indicating that the restriction imposed should be proportionate to the objective sought, should in fact refer to the objective legitimately sought since not all objectives were necessarily legitimate.

36. Mr. ABOUL-NASR said he did not believe that the Committee should interpret the Convention. In his view, the draft recommendation was difficult to understand and formulated in a very confusing way. Why, for example, did paragraph 4 state that rights and freedoms "may be protected by a State party" and not "shall be protected by a State party", since under the terms of article 5 States parties were bound to protect those rights? The Committee should take care in choosing the words it used and be clear. If it was referring to the countries of the European Union, it should say so explicitly.

37. Mr. YUTZIS said that the text was useful for three reasons: first, it stressed the need for States parties to the Convention to fulfil the obligations arising under article 5; secondly, it raised the question of treatment of nationals and non-nationals, which was arising more and more often, and not only in the countries of the European Union; and thirdly, it obliged States parties to take into account the behaviour of private institutions when such behaviour affected the rights covered in article 5 of the Convention.

38. Mr. WOLFRUM, replying to Mr. Garvalov, noted that the Committee had always considered the list of rights mentioned in article 5 to be non-exhaustive. The important point was to prevent discrimination against a particular group. As for the use of the word "presumes", perhaps an English-speaking member of the Committee could find a more appropriate verb.

39. Mr. van Boven's remark that not all objectives were necessarily legitimate was a pertinent one. However, as Mr. Valencia Rodriguez had noted, the word "proportionate" had a subjective connotation that was not compatible with the idea of legitimacy. An effort would be made to find another wording to solve that problem.

40. In reply to Mr. Aboul-Nasr, he said he certainly did not dispute the fact that it was not for the Committee to change the Convention. But the Committee must inform States how it would proceed in considering their reports. As for using the word "may" instead of "shall" in paragraph 4, that was explained by the rest of the sentence, which stated: "either directly ... or indirectly". The question raised in that paragraph was very important: although it was rare for States to practise discrimination overtly, they frequently failed to do enough to prevent discrimination. He proposed that a new version of the draft recommendation should be prepared to take the suggested amendments into account.

The meeting rose at 1 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-eighth session

SUMMARY RECORD OF THE 1133rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 28 February 1996, at 3 p.m.

Chairman: Mr. BANTON

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Twelfth and thirteenth periodic reports of the Russian Federation

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GE.96-15437 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Twelfth and thirteenth periodic reports of the Russian Federation (CERD/C/263/Add.9; HRI/CORE/1/Add.52)

1. At the invitation of the Chairman, Mr. Kolossovsky, Mr. Chernenko, Mr. Zorin, Mr. Davydov, Mr. Demidov, Mr. Parshikov, Mr. Tcherbak, Mr. Malquinov, Ms. Sulitskaya, Mr. Boitchenko, Mr. Dolgoborodov and Mr. Tchoumarlv (Russian Federation) took places at the Committee table.

2. Mr. KOLOSSOVSKY (Russian Federation), introducing his country's twelfth and thirteenth periodic reports (CERD/C/263/Add.9), said that they should be read in conjunction with document HRI/CORE/1/Add.52, which contained relevant statistical, demographic, economic and historical information. When the situation in Russia nad last been considered by the Committee, that country had formed part of the Soviet Union. In its first appearance before the Committee as an independent State, his country wished to stress that the proscription of racial discrimination and the provision of equal rights for all, regardless of nationality, language or attitude to religion, were essential features of Russia as a State containing 176 nationalities and ethnic groups. The establishment of democracy was hampered by delicate problems among the country's various peoples, which were not of recent origin; in the past they had merely been swept under the carpet. In some cases they had been complicated by the breakup of the USSR, but efforts were being made - albeit slowly - to overcome them. The adoption of the new Constitution, by referendum, had come only at the end of 1993.

3. The Russian Federation faced a wide range of complex problems. To protect human rights and freedoms it required both a mature system of laws and an effective mechanism for applying legislative standards. The basis for such laws was contained in the Constitution, in accordance with the universally recognized principles and standards of international law. The federal structure of the country allowed for the cultural and political autonomy of its peoples (art. 5, para. 3, of the Constitution), without detracting from its territorial integrity. The Federation contained 21 republics, 10 national autonomous regions and 1 autonomous area. Indigenous peoples formed a majority in only 6 republics. The various forms of administrative organization obtaining in the country enabled each ethnic group to follow its own social, economic, cultural, religious and legal traditions. The task that remained was to create organs of local self-government, the structure and functions of which would be determined by the inhabitants themselves.

4. The Russian Federation Treaty had been instrumental in improving the distribution of power between the Federal Government and the republics and regions. As a result, the threat of disintegration that had faced the country in 1992-1993 had receded. The agreement between the Russian Federation and the Republic of Tatarstan was an example of constructive efforts to balance rival powers, and similar agreements were in preparation. A number of republics, taking advantage of their new rights, had adopted legislation guaranteeing the rights of national minorities, which went even further than

the federal legislation. There was a real possibility that conflicting interests and standards could be harmonized, since all parties understood the need for compromise and a balance of legal principles.

5. Russian legislation so far lacked a specific definition of racial discrimination, but comprehensive standards were in place that met the requirements of the Convention, both in the Constitution and in federal laws. Article 19 of the Constitution forbade any restrictions on the rights of the individual. Article 29 forbade propaganda of a social, racial, national or linguistic nature and any action likely to arouse social, racial, national or religious hatred or hostility. With regard to self-identification, everyone could decide his or her own national orientation, with no requirement of public disclosure (art. 26 of the Constitution).

6. The law on social organizations, adopted in May 1995, banned the establishment and functioning of social organizations whose aims and actions tended to arouse racial, social, national or religious discord. Similar provisions were contained in the law on meetings, demonstrations, processions and picketing, while a Presidential Decree provided for measures to combat manifestations of fascism and other forms of political extremism. In that connection, a draft federal law would make the promotion of fascism and other forms of political extremism a criminal and administrative offence. Acts intended to stir up racial, national or religious hatred were covered by article 74 of the Criminal Code, which laid down a penalty of up to 10 years' deprivation of liberty for such offences. But the practical application of the article had to take account of the need to protect freedom of opinion and expression.

7. The President had recommended that the Supreme Court should apply the rules relating to individual and corporate responsibility in the matter of human rights violations and clarify existing legal concepts in that field. Pursuant to that recommendation, the Supreme Court planned to issue guidelines to the judiciary. The process had been delayed as a result of the redrafting of the relevant provisions of the new Criminal Code.

8. International treaties signed by the Russian Federation and the principles of international law formed part of the country's legal system. Judges were therefore free to apply the provisions of such treaties, including those of the Convention. To assist judges who might be inexperienced in that area, instruction was given in applying international standards, particularly those concerned with human rights. Seminars were held with the participation of leading foreign experts on the problem of democratizing the appointment of judges.

9. The Government would shortly be submitting to the State Duma its amended draft Concept of National Policy, which would set out the country's priorities with regard to relations between national groups and discuss the coordination of legislative activity at every level. The principles to be enunciated in the document included equal rights and freedoms, equality of all Russians in their dealings with federal bodies, guaranteed rights for numerically small national groups, and the prohibition of social groups whose aim or effect was to arouse racial, national or religious hatred.

10. Measures to protect the rights of national minorities and indigenous national groups, including numerically small groups, and to promote their autonomy, were being applied at both federal and local level. Such "positive discrimination" was justified and, indeed, essential in the current circumstances. Since the beginning of the decade national minorities had also had the right to receive instruction in their own languages, and that right was currently being exercised in thousands of schools.

11. Migration represented a major problem for the Russian Federation, which was sheltering hundreds of thousands of refugees from the countries of the former USSR and from various Asian and African States. Such an influx naturally gave rise to all sorts of problems which the Russian Federation was attempting to solve on the basis of international standards. The draft Concept of National Policy provided for programmes to protect the rights of refugees and forced migrants.

12. In accordance with article 62 of the Constitution, foreigners enjoyed equal rights with Russians, subject only to restrictions prescribed by federal law or international treaties. For example, foreigners could not hold government office.

13. The draft law on national and cultural autonomy had received its first reading in the State Duma in November 1995. Similarly, a third reading had been given to the draft law on the basic legal status of small indigenous population groups, which was intended to uphold the guarantees enshrined in article 69 of the Constitution, by providing for the preservation, revival and development of the culture of such groups.

14. The situation in the Chechen Republic was perceived as a national tragedy at every level of society. The authorities were making every effort to resolve the problem by peaceful political means. The origins of the crisis were political, not national or religious. An illegal regime had taken power in Chechnya by force and had clearly separatist leanings. In recent months it had increasingly resorted to terrorist methods.

15. Since the end of 1991 the Russian Federation had come a long way towards establishing a democratic State. National legislation and practice were close to meeting current international standards, as was evidenced by the country's admission to the Council of Europe. But much remained to be done.

16. Mr. WOLFRUM (Country Rapporteur) emphasized the uniquely momentous changes taking place in the Russian Federation. The report, however, did not fully reflect those changes. Its section headings corresponded to certain elements of articles 2, 4 and 5 of the Convention, but it seemed to be structured according to Russian constitutional law rather than along the lines of the Convention.

17. In 1993 President Yeltsin had established a special Commission on Human Rights, headed by Sergei Kovalev, a former dissident and political prisoner widely respected in human rights circles. In June 1994 the Commission had drafted an unprecedented, highly critical report on human rights practices in Russia in 1993. Human rights monitors had given the President high marks for creating the Commission, but the Government's dialogue with human rights

organizations had broken down as a result of the Russian military operation in the Chechen Republic. The Government had been charged with the indiscriminate use of force, the dissemination of disinformation and an attempt to suppress critical parts of the report in the mass media.

18. There were gaps in the periodic report that needed filling. The Russian Federation was not only composed of various administrative units, but had a diversity of populations belonging to more than 100 nationalities and ethnic groups; they included Russians (82.6 per cent), Tatars (3.6 per cent), Ukrainians (2.7 per cent), Chuvash (1.7 per cent) and Jews (0.4 per cent). The protection of the rights of national minorities and small indigenous population groups was regulated at federal level through the Constitution and other texts, but also through texts adopted by the republics and other regions and territories. There was also a body of legislation requiring the State to guarantee the cultural and linguistic autonomy of minorities. Under the Russian Constitution, civil rights and freedoms were vested in each individual from birth onwards and the use of the Russian language was prescribed throughout the territory, although the republics were entitled to their own languages. The republics also appeared to have jurisdiction over educational matters, and article 43 of the Constitution guaranteed everyone the right to education.

19. The report stated that article 69 of the Constitution guaranteed the rights of small indigenous population groups, in accordance with the principles and norms of international law. He wondered whether that meant that international agreements, including the Convention, had been incorporated in Russian law and accepted as the basis of court rulings. Similarly, he asked what status the Convention enjoyed under Russian law and whether international agreements took precedence over national law.

20. Despite the welcome existence of legislative instruments such as the Declaration on State Sovereignty and the Law on languages, most constituent entities of the Russian Federation lacked a precise legislative policy to deal with the problems of national minorities. However, several republics were trying to rectify the situation. Details missing from the report, with respect to action taken and practical improvements effected in that regard, would be welcomed by the Committee.

21. A Council of Europe delegation, which had visited Moscow to talk to representatives of minorities living in the Russian Federation, had been told by a representative of the Ukrainian minority that individual rights of national minorities in the Russian Federation were not violated because such rights simply did not exist. If that was true and the Constitution provided no effective protection for those rights, might not implementing legislation be called for? The delegation had learned of a series of bills dealing with the rights of minorities and indigenous populations, on which more information should be provided.

22. A further problem concerned the identification of national minorities and the legislative protection they needed. Certain national populations lived as a compact group within their own republic. In that case, protection was provided by the republic concerned. The question that arose was how protection could be guaranteed to minorities not concentrated in a specific

area, such as Greeks, Jews and Germans. The same problem applied in certain areas to Russians who were in a minority position, living dispersed among other ethnic groups.

23. With regard to cultural problems, it had been claimed that not a single school in Moscow provided instruction in the language of that city's 3,000 Tatar residents. Representatives of the Polish minority in Russia had claimed that their associations faced financing problems, although Government support had been provided. The rehabilitation and restitution of buildings depended on the identification of minorities. Church property had been handed back to the Russian Orthodox Church, but there were fewer examples of the handing over of Polish churches, a situation that deserved comment from the Russian delegation. During the Council of Europe's meeting, most representatives of minorities had mentioned the absence of a nationwide broadcasting system in minority languages - again, a situation on which the Russian delegation might wish to provide details.

24. The report of the Russian Federation outlined basic legal provisions which gave effect to the Convention, in particular article 19, paragraph 2, of the Constitution. However, the scope of the constitutional provision was narrower than that of article 1 of the Convention, since it mentioned only equality of rights and did not extend to "distinction, exclusion, restriction or preference". Nor did it make any reference to "descent", a term used in article 1 of the Constitution. The report referred to ongoing efforts to make up for historical injustices suffered by national groups that had been forced to resettle and subjected to other forms of repression. The Law of 26 April 1991 on the rehabilitation of repressed national groups was mentioned, albeit briefly. The Committee would be interested to hear details of the territories restored, the institutions created and the compensation paid. The report also referred to the rehabilitation of minorities such as the Kalmyk, Balkar, Yakut and Karachai national groups but failed to say whether the situation of those groups had improved or to give details of other groups such as the Meskhetian Turks and the Nenets.

25. Information was also lacking on the situation in the Republic of Ingushetia and the problems of North Ossetia. The Human Rights Committee had expressed deep concern at the large numbers of refugees resulting from the war between the Ingush and the Ossetians in North Ossetia and the violent incidents which had occurred when Ossetians had attempted to return home. He requested information on the refugee situation in the region and the state of implementation of Federal Government measures.

26. With regard to article 2 of the Convention, the report dealt extensively with the protection of particular ethnic groups. However, details of a Federal Agreement, agreements between national groups and a multilateral agreement on matters connected with the restoration of the rights of persons who had been deported would have to be fleshed out before the Committee could make a judicious assessment of the situation.

27. Clarification was needed of the statement in the report that the Russian Federation had not yet devised a comprehensive legal policy to protect the rights and interests of minorities.

28. It was regrettable that the delegation's oral presentation had barely touched upon the unfortunate situation in Chechnya. Many sources had claimed that the Russian military had used excessive force when suppressing the attempted secession, which had led to unnecessary suffering among the civilian population and at least 30,000 deaths. Speaking on behalf of the Russian Federation at the fifty-fifth session of the Commission on Human Rights, Mr. Kovalev had referred to the "mistaken" use of force in Chechnya. He had also called for an investigation into the allegations of arbitrary arrest, ill-treatment of prisoners, torture and pillaging. The Committee would appreciate further information on the composition, functioning and findings of the new commissions that had reportedly been set up to investigate human rights violations in Chechnya.

29. He invited the delegation to comment on reports of ill-treatment of Chechens living outside Chechnya and allegations that Chechens were being illegally detained, barred from living in urban areas and subjected to beatings and other human rights violations during detention.

30. There were also allegations that Chechen teenagers and men were being rounded up and placed in so-called "filtration camps". The Human Rights Committee had voiced concern about the reported treatment of detainees at the camps and the fact that the International Committee of the Red Cross was being denied access.

31. Individual cases of the violation of the rights of Chechens had been reported in the Astrakhan region. Similarly, Chechen students had been expelled from agricultural technical schools in the Volgograd region. There were also reports of Chechens being expelled from villages in the Kotovski district. He invited the delegation to comment. It was alleged that those were not isolated incidents in the Volgograd region, but common occurrences.

32. Despite the existence of constitutional guarantees for the protection of minorities, they were not and could not be fully implemented. For example, in 1991, the Constitutional Supervision Committee had ruled that residence permit laws which hindered freedom of movement were unconstitutional, violated international law and would be invalid as from 1 January 1992. However, there were reports that they had been revived at local government level. The Human Rights Committee had expressed concern at the unconstitutional nature of the residence permit system which was applied in breach of article 12 of the International Covenant on Civil and Political Rights. He requested the delegation's views on the matter.

33. The Human Rights Committee had noted with concern that the definition of the term "minorities" did not give protection to all persons, and recommended that the relevant legislation should be amended so as to embrace ethnic, religious and linguistic as well as national minorities, pursuant to articles 2, 26 and 27 of the International Covenant on Civil and Political Rights. It had also documented various allegations of discrimination against non-Russians in the Russian Federation, including instances of police intimidation.

34. The legislation prepared in 1993, and later adopted by the Assembly of Deputies, on the legal status of indigenous peoples of the Russian North

embodied commendable principles relating to the protection of traditional ways of life. It would be interesting to receive further information not only on the legislation and the groups covered by it but on the actual status of such peoples.

35. It was clear that the Russian Federation possessed the machinery to implement article 4 of the Convention. However, the activities of the National Republican Party of Russia and the signs of growing anti-Semitism were examples of the need for vigilance. The Committee was therefore anxious to know how effectively the machinery was being used - for example, whether the closure, announced in December 1993, of 100 publications regarded as fascist had been carried out.

36. With regard to article 5, the principle of equality before the law was enshrined in Russian law; but it would be useful to have information, lacking in the report, on the judicial system, court proceedings and the independence of judges. With regard to subparagraph (b) of that article, he sought an explanation of the numerous allegations of police brutality reported by the Special Rapporteur on torture following his visit to the Russian Federation in 1994 (E/CN.4/1995/34/Add.1, para. 20). Similarly worrying were the possible discriminatory effects of local laws such as the Moscow Civil Government Ordinance, No. 1122 of 7 December 1993, relating to residence permits (propiskas).

37. With regard to article 7, the welcome information that non-Russian languages were taught in some 2,000 schools was offset by the report that educational campaigns to combat racial discrimination had disappeared, and that accommodation advertisements in newspapers often specified restrictions based on race or nationality. Regarding article 14, he wondered whether the authorities' decision to accept individual communications had been made public, and how extensively the Convention had been disseminated in Russia.

38. Summing up, he felt that the report focused too narrowly on the constitutional framework rather than on legislation and enforcement. More comprehensive implementing legislation was required urgently, for the sake of compliance with the Convention, as was a definition of minorities broad enough to cover all the groups concerned. The language problem needed to be addressed, and the application of articles 2 (2) and 4 of the Convention should be strengthened. Excessive use of force in Chechnya and other places should be made punishable by law. The Committee needed a stronger information base, and the next report should be fuller.

39. Mr. de GOUTTES said that the Russian Federation's thirteenth periodic report was made more interesting by the fact that the country had recently joined the Council of Europe and became a party to the European Convention on
a Human Rights, article 14 of which declared non-discrimination legal right. Although the report made reference to applicable human rights instruments, it contained none of the information required by the Committee in respect of such recent events as the conflicts in Chechnya and Ingushetia. Since the Russian Federation was now a member of the Council of Europe, he wondered whether it had accepted the right of individual petition under article 25 of the European Convention on Human Rights. In connection with judicial reform, he asked whether there had been a review of the role of the courts and the

procurator's office with regard to the protection of human rights. He wished to know what provisions regarding ethnic minorities were contained in the instruments of the Commonwealth of Independent States and how those texts compared with the relevant Council of Europe instruments.

40. With regard to the rehabilitation of illegally repressed national groups, he asked which groups benefited from the assistance and protection measures referred to on page 5 of the report, and whether the peoples of Chechnya and Ingushetia were included. Regarding action to combat xenophobia and excessive nationalism, he requested details on the groups which, according to the report, had been deprived, on 12 December 1993, of the right to register for participation in elections; he also wondered whether there were safeguards against the possible use of such measures against bona fide opposition movements. Lastly, he wondered why only 10 cases had been brought before the courts under article 74 of the Criminal Code, relating to racial or national hatred or discord, why 24 cases had been closed, and why there had been only one prosecution in 1993 and none in 1994. In general, the availability of specific legislation and legal remedies was always a true test of the Convention's implementation.

41. Mr. VALENCIA RODRIGUEZ stressed the importance of the guaranteed equality before the law provided for in article 19, paragraph 2 of the Constitution, which was backed by a prohibition of propaganda or agitation to encourage racial hatred or hostility, or ideas of social, racial or national superiority. Russian legislation not only made such acts punishable but provided for compensation for harm caused by the State. In addition, Presidential Decree No. 1661, of 19 October 1993, enabled measures to be taken against bodies which promoted national hostility or social discord. He requested details of the scope of the relevant legislation, since article 4 of the Convention called for the punishment, as well as the prohibition, of such activities and of the bodies responsible for them. With regard to the Federal Law of 14 April 1995 on public associations, which prohibited the formation of associations aimed at fomenting social or racial discord, he asked what sanctions would be imposed on any existing association of that kind. Further details were needed on the actual implementation of Presidential Decree No. 1661.

42. He wondered whether article 74 of the Criminal Code was applied consistently, since it appeared that it had served as the basis for only 10 cases brought before the courts. It would be useful to have further information about the nature of those cases, the sentences passed and any compensation paid, as well as information on any cases still sub judice, and cases of job discrimination.

43. With regard to article 48 of the Constitution, which guaranteed the right to free legal assistance, it would be useful to have details of its application to the various national or racial groups. Regarding article 9, he inquired about the scope of the constitutional right to free enjoyment by peoples of their wealth and natural resources.

44. With regard to the regime established under the Law of 19 February 1993 on forced resettlement as a result of persecution, he requested information concerning perpetrators, the status of victims and the possibility of

compensation and return to place of origin. With regard to the "positive" protection of minorities, including preservation of the mother tongue, he wondered what measures had been adopted to promote minority education, health and employment.

45. The Declaration on the State Sovereignty of the RSFSR, of 12 June 1990, emphasized the right to self-determination of each national group in the Republic, and the report gave several examples of developments relevant to that right in some parts of the Federation. In the case of Chechnya, however, more information was needed on an issue that had ethnic and racial implications. Similarly, there was a need for further information about the conflict between Ossetia and Ingushetia.

46. The Committee should be given details of measures taken under article 69 of the Constitution guaranteeing the rights of small indigenous national groups, including the texts concerning their legal status once the relevant legislation had been passed. He wished to know more about the draft multilateral convention guaranteeing the rights of persons belonging to national or ethnic, linguistic and religious minorities currently being considered by the parliaments of member countries of the Commonwealth of Independent States (CIS). The signing of the Declaration concerning principles of cooperation between the Russian Federation and the Republic of Hungary to guarantee minority rights was a welcome development, and he asked whether similar instruments had been signed with other countries whose citizens constituted minority groups within the Russian Federation. He regretted the absence of information on the implementation of article 7 of the Convention, and asked whether information was disseminated on the aims and purposes of the Convention.

47. Mr. GARVALOV said that the Russian Federation's long experience of multinational and multi-ethnic relations was a source of enrichment to the country. The thirteenth periodic report formed a sound basis for cooperation with the Committee, but said nothing about Chechnya, contained little specific information about court cases involving charges of racial discrimination and placed too much emphasis on the Constitution and certain presidential decrees and too little on judicial and administrative practices. He asked whether the fact that a number of social associations and parties had been deprived of the right to register for participation in elections meant that they were not barred from other activities. Further details were required about the implementation of article 4 of the Convention, which the Committee regarded as mandatory. On the subject of restrictions under article 16 of the Federal Law on public associations, he asked whether political parties established on the basis of ethnic or religious affiliation were allowed to register and operate normally. Drawing attention to the statement that the Russian Federation had yet devised a comprehensive legal policy to protect the rights and interests of minorities, he asked what was the cause of the delays mentioned. He welcomed the frank admission of obstacles encountered in determining national policy priorities in that field.

48. Referring to the draft law on national and cultural autonomy, he inquired about the implications of national autonomy. He noted with interest the existence of a CIS convention guaranteeing the rights of persons belonging to national minorities, which would be complemented by bilateral agreements with

CIS countries not parties to the convention. He asked whether the Russian Federation intended to sign and ratify the Council of Europe's framework convention on the rights of national minorities.

49. On the subject of Chechnya, he opposed secession but could not condone large-scale military or paramilitary operations resulting in major loss of life. More than an ethnic problem, Chechnya was a test of the respective merits of the political and the military option as applied to ethnic conflicts. It was also a test of the right of self-determination.

50. Without seeking to criticize or prejudge the actions taken by a sovereign State in the national interest, he requested clarification of the terms employed in the part of the report concerned with minority rights, which referred variously to the rights of "national groups", "minorities", "peoples", "ethnic communities", and so on. Those distinctions were very important when it came to the right of self-determination, since, although there was a body of opinion in favour of granting that right to minorities, international law did not go that far, recognizing it only as a right of peoples. A willingness to accord the right of self-determination to minorities would be a most interesting development and would have far-reaching consequences. If only collective entities and their collective rights were to be recognized, he wondered whether that approach was compatible with the provisions of the proposed law regulating the rights of persons belonging to national or ethnic, religious and linguistic minorities.

51. Mr. van BOVEN said that the report was incomplete, providing little information on article 3 of the Convention and, in particular, on article 5 (d) (i) and social rights under article 5 (e) (i), (iii) and (iv), areas in which there was evidence of persistent racial and ethnic discrimination. It was also regrettable that the Russian Federation had failed to respond to the Committee's decision 1 (46) urgently requesting a report on the subject of Chechnya. He, too, was concerned about extremism in political parties, extra-parliamentary groupings and ultra-nationalist and anti-Semitic publications, and asked whether the Government and prosecuting agencies were sufficiently vigilant on that issue. Comments would also be welcome on disturbing reports from Human Rights Watch and other organizations about actions against persons belonging to different nationalities and with a darker skin colour by special control forces, and also about police brutality. He drew attention to the Committee's general recommendation XIII on the training of law enforcement officials, and asked what steps had been taken in that direction. He requested further information on the rehabilitation of repressed national groups, referred to on pages 3 and 4 of the report, and particularly on reparation. He understood that special measures were being taken on an individual basis to help Russian citizens of any nationality who were the victims of forced resettlement. More information was needed on the relationship between individual and collective measures. Like Mr. Garvalov, he would be interested to hear the delegation's interpretation of the right of self-determination.

52. He asked what the Government was doing to promote the dissemination of the Convention and other human rights instruments and of the Committee's report and concluding observations. It was gratifying to note that the Russian Federation had made the declaration under article 14 of the

Convention, but he asked what was being done to publicize the procedure for submitting individual communications. Drawing attention to the Committee's general recommendation XVIII on the establishment of an international tribunal to prosecute crimes against humanity, particularly operative paragraph 1 thereof, he wished to know whether the Russian Federation supported developments in that direction.

53. He hoped that the Russian Federation would be able to inform the Committee that it would be accepting the amendment to the Convention providing for the financing of the Committee's activities from the regular budget of the United Nations, endorsed by the General Assembly in resolution 47/111.

54. Mr. YUTZIS was anxious to see qualitative advances in the transition process under way in the Russian Federation. The report regrettably provided little specific information on how legal texts were applied in practice. There seemed to be some discrepancy between the information provided in the report and reality on the ground. He sought confirmation of his understanding that there was in fact no ombudsman's office in the Russian Federation and that the most recent effort to introduce a law on the subject, in February 1995, had failed.

55. He was deeply concerned about certain reported manifestations of racism. In that connection, he cited the nationalistic and anti-Semitic sentiments expressed by Mr. Kasimovsky, editor-in-chief of the newspaper Shturmovik. Another disturbing development had been the recent visit to the Russian Federation by Mr. Le Pen, leader of the French National Front party, to meet Mr. Zhirinovsky, head of the Liberal-Democratic Party of Russia, with the aim of agreeing on an alliance between the nationalist parties of Spain, Italy, Austria, the United Kingdom, the Russian Federation and France. Such an alliance would be a most disturbing development. He appreciated that it was difficult to prevent a citizen of one country from visiting another, but public utterances of that kind gave cause for concern and prompted the question whether they were isolated cases or symptomatic of a broader body of opinion, which might have serious consequences. Some comment on that issue was requested.

The meeting rose at 6 p.m.